



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202 – 2733

MAY - 8 2017

The Honorable Peter Garcia, Jr.  
Governor  
Ohkay Owingeh  
P.O. Box 1099  
Ohkay Owingeh, NM 87566

Dear Governor Garcia:

The Environmental Protection Agency (EPA) has completed its review of the new and revised provisions in the *Ohkay Owingeh Surface Water Quality Standards*. These water quality standards were adopted by Ohkay Owingeh in February 2016 and submitted to EPA for approval in April 2016. I am pleased to inform you that EPA is approving the revisions as documented in Part I of the enclosure to this letter, pursuant to section 303(c) of the Clean Water Act and the implementing regulation at 40 CFR part 131. These provisions include:

- new aquatic life criteria for acrolein, carbaryl and nonylphenol
- revised aquatic life criteria for ammonia
- revised human health criteria for fourteen substances, and
- non-substantive revisions, including editorial changes.

Section 7(a)(2) of the Endangered Species Act (ESA) requires that all federal agencies engage in consultation to ensure their actions are not likely to jeopardize the continued existence of any threatened or endangered species or result in adverse modification of designated critical habitat. EPA has determined that approval of new or revised provisions in the Ohkay Owingeh standards will have no effect on federally-listed threatened and endangered species or on critical habitat.

EPA has also reviewed its previous actions on the 2002 and 2008 triennial revisions of the *Ohkay Owingeh Surface Water Quality Standards*, in which it approved several provisions subject to completion of consultation under the ESA. Based on the evaluation conducted for the 2016 triennial revision, EPA concludes that there is no effect on federally-listed species or on critical habitat, as a result of its previous approval of those revisions. These provisions are identified in Part II of the enclosure and include a critical low flow for implementation of criteria; revisions to the mixing zone policy and narrative toxics criterion; and aquatic life criteria for cadmium, diazinon and silver.

Part III of the enclosure summarizes revisions which do not require EPA action under Clean Water Act section 303(c). EPA has determined that new language under item 11 of Section II. B. Implementation Plan is an implementation provision, rather than a water quality standard under Clean Water Act section 303(c), and, therefore, is not subject to EPA review.

We look forward to continuing to work with you and your staff on Ohkay Owingeh's water quality program. If you have any questions or concerns, please contact me at (214) 665-7101 or have your staff contact Diane Evans at (214) 665-6677.

Sincerely,

A handwritten signature in blue ink, appearing to read "WK Honker".

William K. Honker, P.E.

Director

Water Division

Enclosure

cc: Naomi Archuleta, Water Quality Program Manager  
Ohkay Owingeh Office of Environmental Affairs

## **EPA'S REVIEW OF *OHKAY OWINGEH SURFACE WATER QUALITY STANDARDS* (April 2017)**

The Environmental Protection Agency's (EPA's) action addresses the revisions to the *Ohkay Owingeh Surface Water Quality Standards* adopted in February 2016. The revised water quality standards (WQS) were submitted to EPA in April 2016. This enclosure provides a summary of the revisions and the action taken by EPA including: Part I. Revisions in the 2016 WQS that are approved for purposes of Clean Water Act (CWA) section 303(c); Part II. Revisions that were previously approved for purposes of CWA section 303(c); and Part III. Revisions in the 2016 WQS for which EPA is taking no action under CWA section 303(c).

### **I. REVISIONS IN THE 2016 WQS THAT ARE APPROVED FOR PURPOSES OF CWA SECTION 303(C)**

#### **Section I. Introduction, Authority, and Applicability**

Part H. Ohkay Owingeh removed the 30Q5 design flow from Part H, which was previously used for implementation of human health criteria for non-carcinogenic substances. The harmonic mean flow was retained for implementation of criteria for both carcinogenic and non-carcinogenic substances.

EPA review: EPA approves this revision, which is consistent with the CWA, the federal regulation at 40 CFR part 131, and current EPA guidance.<sup>1</sup>

#### **Section III. General Standards**

Part N. Toxic Substances. Ohkay Owingeh adopted aquatic life criteria for acrolein, carbaryl and nonylphenol, based on EPA's recommended values published under CWA section 304(a). Ohkay Owingeh revised human health criteria for several substances to incorporate the same fish consumption rate, used to derive criteria for most of the existing criteria in the *Ohkay Owingeh Surface Water Quality Standards*. These substances include: acrolein; cyanide; dichlorobenzene 1,4; dichloroethylene 1,1; dichloroethylene 1,2 trans; dichloropropene 1,3 (cis and trans isomers); endrin; ethylbenzene; hexachlorocyclohexane (Lindane); hexachlorocyclopentadiene; phenol; thallium; toluene; and, vinyl chloride.

EPA review: The aquatic life criteria for acrolein, carbaryl and nonylphenol are consistent with EPA's recommended criteria published under CWA section 304(a). The human health criteria identified in the above table were revised to incorporate the same fish consumption rate (17.5 grams/day), as used to derive criteria for most of the existing criteria in the *Ohkay Owingeh Surface Water Quality Standards*. EPA approves the new and revised criteria to protect aquatic life and human health.

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<sup>1</sup> USEPA. 1994. *Water Quality Standards Handbook: Second Edition*. Office of Water. U.S. Environmental Protection Agency. Washington D.C. EPA 823-B-94-005a. See Chapter 5 (updated in 2014) at: <http://water.epa.gov/scitech/swguidance/standards/handbook/index.cfm>

## **Appendix A – Ammonia Standards for Fisheries Protection**

Ohkay Owingeh revised the ammonia criteria based on EPA's recommendations for the protection of aquatic life published under CWA section 304(a). The acute criteria include values to protect waters where species with similar sensitivities as the genus *Oncorhynchus* may be present, as well as waters without such species. A duration and frequency component is included for both the acute and chronic criteria.

EPA review: EPA approves the ammonia criteria in Appendix A, which are consistent with the agency's criteria recommendations published under CWA section 304(a).

### **Other Revisions in the *Ohkay Owingeh Surface Water Quality Standards***

Several revisions are non-substantive in nature and thus do not substantively modify the *Ohkay Owingeh Surface Water Quality Standards*. These include revisions in Section I. Part D and Section IV. Parts A, B and C. In addition, other wording or punctuation changes were made in the standards which were grammatical changes or changes in phrasing that do not alter the meaning or implementation of the WQS.

EPA review: EPA considers such non-substantive edits to existing WQS to constitute new or revised WQS that EPA has the authority and duty to approve or disapprove under CWA section 303(c)(3). While such revisions do not substantively change the meaning or intent of the existing WQS, EPA believes that it is reasonable to treat such non-substantive changes in this manner to ensure public transparency on what provisions are effective for purposes of the CWA. EPA notes that the scope of its action in reviewing and approving or disapproving such non-substantive changes would extend only as far as the actual non-substantive changes themselves. In other words, EPA's action on non-substantive changes to previously approved WQS would not constitute an action on the underlying previously approved WQS. Any challenge to EPA's prior approval of the underlying WQS would be subject to any applicable statute of limitations and prior judicial decisions. EPA approves the listed non-substantive changes in the *Ohkay Owingeh Surface Water Quality Standards*, pursuant to CWA section 303(c).

## **II. REVISIONS IN THE 2002 AND 2008 STANDARDS, PREVIOUSLY APPROVED FOR PURPOSES OF CWA SECTION 303(C)**

EPA previously approved the items in Part II of this enclosure, subject to completion of consultation under section 7(a)(2) of the Endangered Species Act. Based on the evaluation conducted for the 2016 triennial revision, EPA concludes that there is no effect on federally-listed species or on critical habitat, as a result of the previous approval of the following revisions.

### **Section I. Introduction, Authority, and Applicability**

Part H. The 4Q3 flow was added for implementation of numeric criteria for protection of aquatic life and other uses.

### **Section III. General Standards**

Part H. Mixing Zones. The provision for mixing zones was modified to allow mixing zones for dissolved oxygen and other parameters.

Part N. Toxic Substances. Under item 1, the narrative toxics criteria statement was revised to be consistent with the provisions for critical low flow in Section I. Part H. and for mixing zones in Part H of this section. Ohkay Owingeh also adopted aquatic life criteria for diazinon and revised the aquatic life criteria for cadmium and silver, based on EPA's recommended values.

### **III. REVISIONS IN THE 2016 WQS FOR WHICH EPA IS TAKING NO ACTION UNDER CWA SECTION 303(C)**

#### **Section II. Antidegradation Policy and Implementation Plan**

Part B. Implementation Plan. Ohkay Owingeh added language under item 11 which directs the Office of Environmental Affairs to seek funding for construction of tribal wastewater treatment facilities. EPA is not taking action on this provisions because it is not (1) a legally binding provision adopted or established pursuant to Tribal law that (2) addresses designated uses, criteria, or antidegradation, and (3) describes the desired condition or level of protection of a water body.